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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176791
Party	Defendant MATTEL, INC.
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Attachments	Objections to Waddell Decl.pdf (11 pages)(53221 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

**APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS
TO STRIKE PORTIONS OF TRIAL DECLARATION OF WILLIAM WADDELL**

Applicant Mattel, Inc. hereby objects to and moves to strike portions of the Trial
Declaration of William Waddell dated March 17, 2009.

The following format is used below:

- (1) the Declaration is copied verbatim;
- (2) where Applicant objects to all or a portion of a paragraph, the objected-to portion is shown as stricken (e.g., ~~The person told me that~~ ...) followed by a highlighted “objection number” (e.g., [Obj. 2]); and

(3) the paragraph in the Declaration with the stricken language is followed by a table (or box) containing (a) the “objection number” for the objected-to portion, (b) the page and line reference in the Declaration for the objected-to portion, (c) the ground(s) upon which Applicant objects and moves to strike the objected-to portion, and (d) for the Board’s convenience, two boxes with headings “Sustained/Stricken” and “Overruled” for marking by the Board.

Respectfully submitted,

DATED: February 11, 2010

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: /srf/
Lawrence Y. Iser
Chad R. Fitzgerald
Attorneys for Applicant MATTEL, INC.

TRIAL DECLARATION OF WILLIAM WADDELL DATED MARCH 17, 2009

WITH OBJECTIONABLE PORTIONS STRICKEN

TRIAL DECLARATION OF WILLIAM WADDELL

WILLIAM WADDELL declares under penalty of perjury as follows:

1. I am Vice President of Business Affairs of Universal Music Enterprises (“UME”), an unincorporated division of Opposer UMG Recordings, Inc. (“UMG”), with offices at 2220 Colorado Avenue, Santa Monica, California 90404 (UMG and UME are collectively referred to as “UMG”). My responsibilities as Vice President of Business Affairs include overseeing a portion of the business affairs of UMG, including the licensing activities of UMG’s trademarks. Such licensing activity includes licenses pertaining to the Motown recording label (hereinafter “Motown”). I first joined UMG as Associate Director, Business and Legal Affairs of MCA Records in 1999, and was appointed to my present position in 2002. I submit this declaration as testimony in connection with the above captioned proceeding.

2. I have access to the books and records of UMG relevant to the matters covered herein, including all relevant records pertaining to UMG’s licensing activities with respect to Motown. I confirm that the facts and matters set out herein are based on my own knowledge and understanding and/or are from the records and documents of UMG to which I have access.

3. ~~UMG has entered into numerous license agreements with third parties for use of MOTOWN and MOTOWN formative trademarks referenced in the chart attached hereto as Exhibit I (the “MOTOWN Marks”) in connection with a wide variety of goods and services, which have generated significant additional revenue for UMG. [Obj. 1]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD’S RULING
1	¶ 3	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

		R. Evid. 1002).	
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4. ~~In connection with the nationwide sale of toys, games, and playthings in particular, UMG's licensing activity is as follows. [Obj. 2]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
2	¶ 4	(a) Exhibit speaks for itself (Fed. R. Evid. 1002); (b) Lack of Foundation/Personal Knowledge (Fed. R. Evid. 602); (c) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

5. ~~On or around December 1, 2001, UMG's predecessor in interest entered into a license agreement with CA One Services Inc, for use of MOTOWN Marks and Motown memorabilia in connection with the operation of a Motown Store in the Detroit metropolitan area. A true and correct copy of that license agreement, which is regularly kept in the course of UMG's business, and photographic depictions of some of the licensed merchandise are attached hereto as, respectively, Exhibits J and K. [Obj. 3]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
3	¶ 5	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

6. ~~On or around October 31, 2002, UMG entered into a license agreement with Late for the Sky Productions Co., Inc., for use of MOTOWN Marks in connection with a board game. A true and correct copy of that license agreement, which is regularly kept in the course of UMG's business, and photographic depictions of the licensed merchandise are attached hereto as, respectively, Exhibits L and M. [Obj. 4]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
4	¶ 6	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

7. ~~On or around February 7, 2003, UMG entered into a license agreement with The Singing Machine Company, Inc., for use of MOTOWN Marks in connection with a karaoke machine and karaoke "CDGs" (CDs with graphics). A true and correct copy of that license agreement, which is regularly kept in the course of UMG's business, and photographic depictions of the licensed merchandise are attached hereto as, respectively, Exhibits N and O. [Obj. 5]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
5	¶ 7	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

8. ~~On or around November 16, 2004, UMG entered into a license agreement with Konami Digital Entertainment, Inc., for use of MOTOWN Marks in connection with a videogame. A true and correct copy of that license agreement, which is regularly kept in the course of UMG's business, and photographic depictions of the licensed merchandise are attached hereto as, respectively, Exhibits P and Q. [Obj. 6]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
6	¶ 8	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

9. ~~On or around May 19, 2004, UMG entered into a license agreement with Hasbro, Inc., for use of MOTOWN Marks in connection with a toy known as "HitClips." A true and correct copy of that license agreement, which is regularly kept in the course of UMG's business, and photographic depictions of the licensed merchandise are attached hereto as, respectively, Exhibits R and S. On or around November 6, 2008, UMG also entered into a license relationship with Hasbro, Inc. in connection with a "ToothTunes" musical toothbrush, a photographic depiction of which is attached hereto as Exhibit T. [Obj. 7]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
7	¶ 9	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

10. ~~True and correct copies of UMG's business records reflecting royalties in connection with its aforementioned licenses in connection with toys, games, and playthings, which are regularly kept in the course of UMG's business, are attached hereto as Exhibit U, including: (1) "licensing reports" produced by UMG in the course of this Opposition, bates-labeled UMG 106, 108 and 123; (2) correspondence between UMG and its licensing agents produced by UMG in the course of this Opposition, bates-labeled UMG 100, 110, 112, 115 and 121; (3) "quarterly royalty statements" produced by UMG in the course of this Opposition, bates-labeled UMG 82, 83, 89, 95, 97, 103, 109, 113, 114, 126, 130 and 133; (4) copies of checks produced by UMG in the course of this Opposition, bates-labeled UMG 74, 81, 88, 93, 96, 98, 101, 104, 105, 107, 116, 117, 120, 124, 127, 128, 131 and 134; (5) a wire transfer statement produced by UMG in the course of this Opposition, bates-labeled UMG 132; (6) a journal entry produced by UMG in the course of this Opposition, bates-labeled UMG 72; (7) "payment requests" produced by UMG in the course of this Opposition, bates-labeled UMG 76, 87, 92, 94, 99, 102, 111, 125 and 129; (8) a Hasbro report, produced by UMG in the course of this Opposition, bates-labeled UMG 215; (9) documents entitled "Summary of Revenues / Royalties Paid produced by UMG in the course of this Opposition, bates-labeled UMG 207-214. [Obj. 8]~~

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
8	¶ 10	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

11. ~~All of the foregoing use of the MOTOWN Marks by third parties is under license from UMG and inures to UMG's benefit. [Obj. 9]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
9	¶ 11	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

12. ~~True and correct copies of UMG's U.S. Registration Nos. 1075409, 2663608, 2767101, 0881471, 0985976, 0985972, 2516930, and 3073897 for the Motown marks and various related official records, copies of which are regularly kept in the course of UMG's business, are attached hereto as Exhibit V. [Obj. 10]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
10	¶ 12	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Lack of Foundation/Personal Knowledge (Fed. R. Evid. 602); (d) Lacks Authentication (Fed. R. Evid. 901); Improper submission of registrations (Trademark Rule 2.122(d)).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

13. ~~UMG vigorously enforces its trademark rights against third parties. Attached hereto as Exhibit W is a representative sampling of true and correct copies of enforcement~~

~~documents sent by UMG to various third parties, copies of which are regularly kept in the course of UMG's business, including: (1) a February 25, 2005 cease and desist letter to Beasley Broadcast Group, Inc.; (2) a July 18, 2005 opposition to Millers Oils Limited; (3) an October 3, 2005 cease and desist letter to SOFA Home Entertainment; (4) an April 6, 2006 cease and desist letter to SonyBMG; (5) an April 18, 2007 cease and desist letter to American Motown.com, LLC; (6) a February 20, 2008 Opposition to Motown Harley Davidson, Inc.; (7) a May 13, 2008 cease and desist letter to 1 & 1 Internet, Inc. and SJG Productions LLC; (8) a September 10, 2008 cease and desist letter to Peter Brent Promotions. [Obj. 11]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
11	¶ 13	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Lack of Foundation/Personal Knowledge (Fed. R. Evid. 602); (d) Hearsay (Fed. R. Evid. 802).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 17, 2009, at Los Angeles, California.

/S/
WILLIAM WADDELL

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Evidentiary Objections and Request to Strike has been personally served on counsel for Opposer UMG Recordings, Inc., both personally and through ESTTA, on February 11, 2010.

/crf/

Chad R. Fitzgerald